

REMARKS

The Office Action mailed September 2, 2004 and references cited therein have been reviewed. Applicants acknowledge and confirm the election of the claims drawn to a method of making a sandwich classified in class 426, subclass 275. Accordingly, Applicants have withdrawn claims 13-24 which are drawn to a sandwich product. Applicants have also amended claims 25, 29-30, 33-40, and added new claims 43 and 44.

THE SECTION 112 REJECTION

Claims 39-40 were rejected under 35 U.S.C. 112(2) as being indefinite for failing to particularly point out and distinctly claim the invention. Specifically, the Examiner objected to the language "wherein at least partially cutting off." The Examiner stated that it was unclear what was being cut off. Applicants have amended claims 39 and 40 to clarify the scope of the claims. Applicants submit that amended claims 39 and 40 are in proper form pursuant to 35 U.S.C. 112.

Claims 26, 31-32 and 33-40 were rejected under 35 U.S.C. 112(1) as failing to comply with the written description requirement. The Examiner asserted that such claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

The Examiner asserted that the water activity limitation in claim 26 was not included in the originally filed specification. Although Applicants disagree with this rejection, claim 26 has been amended to track language set forth in the originally filed Abstract. Applicants submit that claim 26 is in proper form pursuant to 35 U.S.C. 112.

The Examiner asserted that the spacing limitation for the depressions in claims 31 and 32 was not included in the originally filed specification. Applicants disagree. Page 4 lines 3-10 discuss

the cutting cylinder having a notched end with notches spaced approximately every 1/8 inch. This section of the specification also discloses that these notches form depressions 28. (See also Page 4, lines 21-24, Figures 3 and 5). As such, this spacing limitation for the depressions is supported by the originally filed specification. Applicants submit that claims 31 and 32 are in proper form pursuant to 35 U.S.C. 112.

The Examiner asserted that the limitations of claims 33-40 were not included in the originally filed specification. Applicants disagree. The Examiner objected to the claims 33-34 for including the language that the platen has a central portion and a pressure surface. Applicants admit that the phraseology used in the claims is not used in the specification; however, the claim language is supported by Figures 1 and 2 and page 4, line 14 through page 5, line 13. As shown in Figures 1 and 2, bread portion 20 is positioned on plate 12. The outer peripheral edge of bread portion 20 does not extend over the edge of plate 12. As such, bread portion 20, as illustrated in Figures 1 and 3, must be positioned in a central region of plate 12. The fillings 30a, 30b and 32 are disclosed as being positioned relative to the bread slices 20, 22 such that when the bread slices are cut and sealed, the filling is not in the sealing area (Page 4, line 16 through page 5, line 6; Figures 1, 2 & 4). As illustrated in Figures 1 and 2, the fillings 30a, 30b and 32 are positioned inwardly of the peripheral edge of the bread slices 20, 22. The location of the peripheral edge of the fillings 30a and 30b relative to plate 12 is defined in the claims as the “central portion” of the platen. The specification discloses the cutting cylinder penetrates the bread slices and forms a sealed region in the bread slices that is absent the fillings (Page 4, lines 16-22; Page 5, lines 5-6; Figures 2 & 4). Figure 2 also discloses that the cutting cylinder contacts plate 12 at a location that is outside the peripheral edge of fillings 30a and 30b. This location where the cutting cylinder contacts plate 12 is defined in the claims as the “pressure surface” of the platen. This “pressure surface” surrounds the “central

portion” of the platen. Applicants submit that Figure 2 in-and-of-itself supports the limitation defined in claims 33 and 34.

Although Applicants submit that the limitations set forth in claims 33-40 are supported by the originally filed specification, applicants have amended claims 33-40 to better define the scope of the claims. Applicants submit that all the pending claims are in proper form pursuant to 35 U.S.C. 112.

THE SECTION 103 REJECTION

Claims 25-42 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kaiser in view of Shideler.

Kaiser is excerpts from a cookbook containing a compilation of more than 100 recipes. The cookbook also mentions, but does not describe, a “Tartmaster” and a “Krimpkut Sealer.” These devices are allegedly used to form the various products mentioned in the cookbook. The construction and structure of the “Tartmaster” are not discussed in the cookbook. There is also no edge structure of any product disclosed in Kaiser. The resulting structure of a sandwich formed by the “Tartmaster” can only be inferred. Kaiser can only suggest process use of an illustrated device, without explanation of its structure or what results in its use. Kaiser does not explain how the ravioli edge differs from the edge of a tart formed from bread. Kaiser merely illustrates the same edge for both products.

Shideler is an excerpt from a 1994 article in the Wichita Eagle. The full article includes 41 tips for parents of school age children to “smooth the way” through the first week of school. One of the many tips mentioned in the article is how to prevent the bread slices of a peanut butter and jelly sandwich from becoming soggy.

The examiner relied solely on Kaiser and Shideler to support a finding that the method of

forming a crustless sandwich and the resulting structure of the sealing region defined in the pending claims is taught, or at least inferred from Kaiser and Shideler. Shideler does not include any disclosure, teaching or suggestion concerning the structure of a seal of a sandwich. In addition, Kaiser does not include any disclosure, teaching or suggestion concerning the structure of a seal formed by a "Tartmaster" or "Krimpkut Sealer." The examiner's reliance on inferred or assumed teachings of a method of using a "Tartmaster" and the resulting compression edge seal formed by use of the "Tartmaster" is not supported by Kaiser. The declarations of Leon Levine, Malcolm Cooke and Brian Turung, which are enclosed herein as Exhibits A-C, confirm that a sandwich formed by the "Tartmaster" forms a seal edge of a homogeneous amorphous mass of bread or dough, and not the sealing region defined in the pending claims.

Kaiser and Shideler also do not disclose, teach or suggest to one skilled in the art a plurality of closed depressions in the sealing region used to increase the holding action at the sealing region to prevent the two cut bread slices from inadvertently separating. The function of any structure on the tarts, pasta or sandwiches formed by the "Tartmaster" or "Krimpkut Sealer" is absent from Kaiser.

Kaiser and Shideler also do not disclose, teach or suggest to one skilled in the art, a sandwich having a specific type of sealing region and a centered filling formed of a layer of second food spread encapsulated inside the outer peripheries of a first and third food spread. The concept of forming any type of encapsulated filling is not taught or implied from the combined teachings of Kaiser and Shideler.

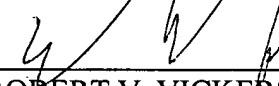
Kaiser and Shideler also do not disclose, teach or suggest one skilled in the art the packaging of a sandwich in an airtight package for long term storage. Kaiser merely discloses that a sandwich can be "wrapped" and frozen for up to two weeks prior to consumption. The suggestion or inference

from this disclosure that a sandwich should or could be packaged in an airtight film is not supported by Kaiser.

The evidence of secondary considerations as set forth in the Declaration of Steven T. Oakland dated 7/16/01 (Exhibit D); Declaration of Steven T. Oakland dated 2/28/02 (Exhibit E); Declaration of Steven T. Oakland dated 3/21/02 (Exhibit F); and Declaration of John Purcell (Exhibit G) also support the patentability of the pending claims.

Applicants submit that the pending claims are patentably distinct from the cited art of record. A notice of allowance is respectfully requested.

Respectfully submitted,
FAY, SHARPE, FAGAN, MINNICH & McKEE

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